Pacific Design Center *and* Lorenzo J. Sauno. Case 31–CA–25082

June 30, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

On January 4, 2002, Administrative Law Judge Lana H. Parke issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and affirms the judge's rulings, findings[1] and conclusions and adopts the recommended Order except as modified herein.[2]

ORDER

The National Labor Relations Board adopts the recommend Order of the administrative law judge as modified below and orders that the Respondent, Pacific Design Center, Los Angeles, California, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(d):

"(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with retaliation for engaging in union and/or other concerted protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Local 1877, Service Employees' International Union or for engaging in any other concerted protected activity or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Lorenzo J. Sauno full reinstatement to his former job, or, if his job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Lorenzo J. Sauno whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlaw-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Member Schaumber does not rely on certain reasons provided by the judge in support of her finding of pretext. First, he does not rely on the judge's finding of pretext because Lorenzo Sauno's termination on March 9, 2001, was "unexpected and abrupt." The judge reasoned that even though the remodeling of the building in which Sauno worked had been taking place for several months prior to his discharge, Respondent never informed employees that the construction could result in an employee cutback. Member Schaumber notes that while it is a fair practice to do so, the judge found the employer was under no obligation to notify employees of impending personnel actions and Respondent does not have a policy or follow a procedure regarding such employee notifications. More significantly, the judge's finding is not supported by the record. There is no evidence that the decision makers knew that the bathrooms Sauno cleaned would be demolished leaving him without work until the first week in March and, as mentioned above, Sauno was laid off on March 9. Second, Member Schaumber would not rely on the Respondent's failure to recall Sauno as evidence of pretext because there is no evidence that Respondent had a policy of recalling employees who are laid off. Moreover, while the judge is correct that the Respondent hired other janitorial employees after Sauno's discharge, two of these three employees were hired at least 6 months following his termination, and the third employee was hired on an unspecified date.

While they believe that each of the reasons cited by the judge supported her finding of pretext, Member Liebman and Member Walsh would adopt the judge's finding even if it were appropriate to rely only on the reasons endorsed by Member Schaumber.

[2] We shall modify the judge's recommended Order in accordance with our decision in *Ferguson Electric Co*., 335 NLRB 142 (2001). Further, we shall substitute a new notice in accordance with our decision in *Ishikawa Gasket America, Inc*., 337 NLRB 175 (2001).

ful discharge of Lorenzo J. Sauno, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

PACIFIC DESIGN CENTER

Nikki Cheaney, Atty., for the General Counsel.
Betsy Johnson, Atty. (Epstein, Becker & Green, P.C.), of Los Angeles, California, for the Respondent.
Lorenzo J. Sauno, pro se, of Hawthorne, California for the Charging Party.

DECISION

STATEMENT OF THE CASE

LANA PARKE, Administrative Law Judge. On a complaint and notice of hearing issued August 30, 2001,[1] trial was held In Los Angeles, California, on November 13. The complaint charges that Pacific Design Center (Respondent) on January 13 threatened and on March 9 terminated Lorenzo J. Sauno (Sauno or Charging Party) in violation of Section 8(a)(1) and (3) of the Act.

Issues

1. Did Respondent, on January 13 threaten Sauno with retaliation for engaging in union and/or other concerted protected activity in violation of Section 8(a)(1) of the Act?

2. Did Respondent, on March 9 terminate Sauno's employment because he engaged in union and/or concerted protected activity and to discourage employees from engaging in such activities in violation of Section 8(a)(3) and (1) of the Act?

On the entire record, including my observation of the demeanor of the witnesses, and after considering the argument of counsel for the General Counsel and the argument and brief filed by Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation, is engaged in the business of leasing and managing showroom space with an office and place of business in Los Angeles, California. In the calendar year ending December 2000, Respondent derived gross revenues in excess of $100,000 of which in excess of $50,000 was derived from performance of services for customers located outside the State of California. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 1877, Service Employees' International Union (the Union) is a labor organization within the meaning of Section 2(5) of the Act.[2]

[1] All dates are in 2001 unless otherwise indicated.

[2] At the hearing, Respondent stipulated that the Union was a labor organization within the meaning of the Act. Where not otherwise noted, the findings are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.

II. ALLEGED UNFAIR LABOR PRACTICES

1. The union organizing effort

Respondent's facilities consist of two buildings referred to as the green building and the blue building. The green building has nine floors and the blue building has six floors. In October 1999, Cohen Bros. Realty (Cohen Bros.), a realty company based in New York purchased Respondent, which became a subsidiary corporation of Cohen Bros. Although Cohen Bros. maintains general oversight responsibility, Respondent is a separate corporate entity. Prior to the purchase a maintenance company, Pedus, performed Respondent's custodial work at its Los Angeles, California offices. Pedus had a contract with the Union covering its janitorial employees. At the time of purchase, Respondent took the janitorial work "in-house," that is, directly employed its own janitorial employees, some of whom were formerly employed by Pedus. No party contends that the Union continued to have a contract covering the janitorial employees following Cohen Bros. purchase of Respondent or that any successorship issue exists.

Steve Alvarez (Alvarez) is Cohen Bros'. vice president in charge of building services. Since the change of ownership, Ed Haduch (Haduch) has been Respondent's building manager. Howard Hyde (Hyde) has been Respondent's property manager. According to Hyde, he reports to Haduch concerning the overall well being of Respondent's facilities and to Alvarez for all purchasing and all employee-related items. Julia Deligadillo, night supervisor (Deligadillo) reports to Hyde.

In January or February 2000, Sauno and five or six of Respondent's other janitorial employees met with union representative, David Huerta (Huerta.) The employees wanted the Union as their collective-bargaining representative at Respondent. As the Union had a relationship with Cohen Bros. in New York, Huerta was optimistic about gaining recognition by Respondent now that Cohen Bros. was Respondent's parent company. Huerta told employees they needed to sign a petition and union cards. A meeting of Respondent's janitorial employees was scheduled for late February or early March at Respondent's courtyard area.

At the February/March 2000 courtyard meeting, employees were encouraged to sign union cards and a petition requesting negotiations. According to Huerta, Sauno was the most vocal employee in the move to organize the Union, encouraging other workers not to be fearful. Employees signed a petition to be presented to Cohen Bros. and authorization cards. Following the meeting, at Cohen Bros. request, a copy of the petition was faxed and copies of the cards were mailed to Cohen Bros. to demonstrate support for the Union. Thereafter, Alvarez informed the Union that Cohen Bros. was willing to sit down with the Union and discuss the terms of a contract to cover Respondent's janitorial employees. In March 2000, Huerta and several employees met with Alvarez at Respondent's offices and discussed a collective-bargaining agreement. Sauno was not among the employees. Alvarez asked if the Union would negotiate an agreement outside of the maintenance contractors' master agreement due to expire on March 31, 2000. Huerta agreed to do so and presented Alvarez with the maintenance contractors' agreement, presumably as the Union's contract

offer. Alvarez said that he preferred to wait until the successor master agreement was negotiated, finalized, and then sent to his office for review.

At some point following Huerta's meeting with Alvarez, Sauno told Huerta that employees felt the Union needed to pressure Cohen Bros. more. Sauno and two or three other employees met with Huerta at the union office. Huerta reported that the Union had sent Cohen Bros. the maintenance contractors' agreement as a proposed contract, but Cohen Bros. had not responded. Huerta told the employees they needed to send a message to Cohen Bros. that if Respondent did not enter into an agreement, the employees would proceed with their organizing effort. Huerta gave Sauno a second petition to circulate for employee signatures. Once signatures were obtained, the petition was to be presented to Respondent.

Respondent's janitorial employees signed a second petition signifying their support for the Union and protesting Cohen Bros.' failure to acknowledge the Union and negotiate a collective-bargaining agreement. Huerta hand-delivered the second petition to Cohen Bros. at Respondent's Los Angeles office on January 22 or 23 accompanied by approximately six to eight workers, including Sauno. Huerta appointed Sauno as spokesperson for the employees. The delegation met with Haduch in Respondent's conference room. Huerta told Haduch of his previous communications with Alvarez and gave him the petition. Sauno, speaking on behalf of the employees, said that in April 2000, workers under the master agreement had gone on strike for better wages and benefits, and the janitorial employees at Respondent felt they also needed better wages and benefits.[3] Haduch said he would forward the information to Cohen Bros. He said Cohen Bros. wanted to give better wages and benefits, and they wanted to do what was right for the workers.[4]

2. The termination of Sauno

Respondent hired Sauno as a janitor in January 2000. His supervisor was Deligadillo. He was assigned to clean the 18 restrooms of the green building and five restrooms in the blue building.

In the latter half of 2000, Respondent had commenced a building-remodeling project replacing existing restrooms with an expanded elevator system. By March all restrooms on the first, fifth, seventh, eighth, and ninth floors and one on the sixth floor of the green building were closed.

A few days after the January employee delegation meeting with Haduch, Deligadillo came to Sauno as he was working on the sixth floor of the green building. Deligadillo said to him in Spanish, "Are you still getting your coworkers excited about the Union? Then you are going to have serious problems." Sauno did not respond.[5]

In the first week of March, according to Deligadillo, she told Hyde there was insufficient work for Sauno. Hyde testified that Deligadillo did not identify Sauno, but only referred to "the bathroom cleaner." Deligadillo's testimony was specific and clear that she named Sauno. Based on Deligadillo's credible testimony in this regard, and considering Hyde's incredible testimony (set forth below), I find that Hyde knew Sauno was the employee in question. Deligadillo testified that she asked whether Sauno should be given 4 hours work or laid off. Hyde said he would talk to Alvarez about it.

According to Hyde, he told Alvarez that the cleaner of the green building would soon be out of work and that Respondent needed to decide how "we wanted to progress with his . . . job." Alvarez instructed Hyde to lay off the cleaner. After Alvarez directed the layoff, Hyde testified, he told Alvarez that the cleaner was Sauno so that "we could start preparations for getting the checks together." Thereafter, Hyde instructed Deligadillo to let Sauno go. Hyde then informed payroll personnel to start preparations for Sauno's final check. Although unrefuted, I cannot accept Hyde's testimony regarding the decision to terminate Sauno. Hyde's testimony was inconsistent and contradictory. As noted, Hyde testified that Deligadillo did not tell him the name of the affected cleaner. Yet he testified that he told Alvarez the cleaner was Sauno. Hyde said he named the cleaner so that Respondent could prepare checks. Yet Hyde also testified that he informed payroll to process Sauno's final check. Clearly, Alvarez had no involvement in the ordering or preparation of Sauno's final check. Hyde's testimony of why he told Alvarez the cleaner's name lacks inherent congruity and further undercuts his credibility. Consequently, there is no credible evidence as to how or why Respondent decided to terminate Sauno.

On March 9, Deligadillo called Sauno into her office. Present were the security supervisor and a security guard. Deligadillo told Sauno that there would not be any more work for him because some areas of the building were going to close down for restroom remodeling. She gave him his final check.

Sauno asked why he was being terminated as he had more seniority than other employees, including temporary employees, and he should be moved to another area when the restrooms closed. Deligadillo said the Company had made the decision, and she had nothing else to say to Sauno. The security personnel escorted Sauno to get his belongings and leave the premises. Although Respondent's witnesses used the terms "layoff" and "termination" interchangeably in describing the personnel action taken against Sauno, it is clear that Respondent had no intention of recalling Sauno to work. I find that Sauno's termination was, in fact, a discharge.

After terminating Sauno, during the next several months Respondent hired three janitorial employees and gave a permanent

[3] Sauno spoke Spanish, which was translated by Huerta.

[4] Although there is no direct evidence that the petition was forwarded to Cohen Bros., Respondent presented no evidence that it was not. Haduch did not testify. It is reasonable to infer both that the petition was forwarded to Alvarez and that the circumstances of its presentation were described, including Sauno's role as spokesperson.

[5] Deligadillo denied having any such conversation. Although Sauno's accounts of this encounter varied slightly under cross and redirect examination, the essential thrust of his testimony did not alter. I give weight to Sauno's testimony. I found him to be direct and sincere. I cannot fully rely on Deligadillo's testimony. She appeared willing to shape her testimony dependant on the examiner. For example, on cross-examination, she insisted her prehearing affidavit statement that showrooms were closed during construction was a mistake, that only the restrooms were closed. However, on redirect examination, she agreed that certain showrooms had, indeed, been closed.

position to an on-call janitorial employee. The positions were never offered to Sauno.

On hearing rumors of Sauno's upcoming NLRB hearing, 12 employees signed a letter dated September 10 and presented it to Hyde. Copies were also sent to counsel for the General Counsel and Respondent's attorney. The letter stated employees' satisfaction with Respondent and their supervisors and continued:

> All we want is to work well and better. We are not in agreement with people who are trying to harm us nor our supervisor. All we know is that we are witnesses that Mr. Lorenzo J. Sauno had a bad attitude, he did not respect and did not do his work as he was supposed to. Due to his bad attitude, nothing could be said to him. He was very aggressive. We never asked him to represent us in any situation, how he has said. Everyone here is very satisfied with the way we are treated.

Guillermina Almonte (Almonte), author of the letter, testified that its purpose was to prevent Sauno's return. Almonte testified that Sauno had been violent with Deligadillo when he worked at Respondent, yelling at her and using obscene words. Although Deligadillo agreed that Sauno sometimes "yell[ed]" at her, she did not testify that Sauno's conduct prompted discipline or in any way motivated his discharge. She testified that he was a good worker.

Discussion

Supporting and encouraging other employees to support the Union and serving as an employee spokesperson are activities clearly protected by Section 7 of the Act. Sauno was engaged in protected activities when he assisted the Union in gathering employee signatures and when he spoke for employees at the January meeting with Haduch.

The General Counsel argues that Deligadillo's statement to Sauno that he was going to have serious problems because he was getting coworkers excited about the Union was a threat of retaliation against Sauno because he engaged in protected activities. Although Delgadillo did not specify what the serious problems would be, the unmistakable import of her statement was that Sauno would have difficulties at work consequent to his union support. I find her statement constituted a threat of unspecified retaliation or reprisal because of Sauno's concerted protected activities. See *Sea Ray Boats, Inc.*, 336 NLRB 779 (2001); *Ebenezer Rail Car Services*, 333 NLRB 167 (2001). The statement is, moreover, clear evidence of Respondent's antiunion animus.[6]

Respondent, having expressed its animosity toward Sauno's union activities terminated him a few weeks later. The question is whether Respondent's animus toward Sauno's activities prompted his March 9 termination. I analyze the lawfulness of Sauno's termination by applying the Board's analytical framework set out in *Wright Line*.[7] Under this framework, the General Counsel must make a prima facie showing sufficient to support an inference that animosity toward Sauno's protected activity was a motivating factor in his termination. The prima facie case may be established by proving the following four elements: (1) the alleged discriminatee engaged in union or protected concerted activities; (2) Respondent knew about such activity; (3) Respondent took adverse employment action against the alleged discriminatee; and, (4) there is a link or nexus between the protected activity and the adverse employment action. *Hays Corp.*, 334 NLRB 48 (2001). The first three elements are clearly established herein.[8]

The pivotal factual inquiry in determining whether the General Counsel has made a prima facie showing involves the fourth element, i.e. whether there is a link or nexus between Sauno's union activities and his termination. In resolving this issue, it is necessary to determine, if possible, Respondent's motive in terminating Sauno. If the evidence shows that animosity toward Sauno's union activities formed any part of the basis for his layoff selection, then the General Counsel has made his prima facie case. Once the General Counsel has made his prima facie case, the burden shifts to Respondent to show, in essence, that it would have taken the same action for nondiscriminatory reasons, even in the absence of protected activity.

Motive is a question of fact, and the Board may infer discriminatory motivation from either direct or circumstantial evidence. Since direct evidence is rare, evidence of an employer's motive in personnel actions must frequently be gleaned from the circumstances surrounding the actions. Indications of discriminatory motive may include expressed hostility toward the protected activity,[9] abruptness of the adverse action,[10] timing,[11] pretextual reason,[12] disparate treatment,[13] departure from past practice,[14] and/ or the employer's inability to adhere to a consistent explanation for the action.[15]

A few week's before Sauno's discharge, Respondent revealed its animosity toward his union support through Deligadillo's direct threat of reprisal. The disclosure of animosity and threat of retaliation provide a clear nexus between Sauno's protected activity and his discharge. Thus, the General Counsel has established the fourth element of a prima facie showing of

[6] The General Counsel does not argue that Deligadillo's statement was also unlawful interrogation. Since the question, "Are you still . . ." was not alleged as interrogation, and as it appears to be rhetorical or introductory to the threat, I do not make a separate finding of unlawful interrogation.

[7] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[8] Delagadillo is an admitted statutory supervisor. As such, her statements and knowledge are properly attributable to Respondent. *Taylor Division*, 336 NLRB 157, 158 fn. 6 (2001). Her statements to Sauno prove both knowledge and animus. Moreover, Haduch, in upper management, was well aware of Sauno's union activity, as Sauno had been the employee spokesperson at the January meeting. Respondent argues there is no evidence that Haduch (who did not testify) ever related Sauno's role to either Hyde or Alvarez. However, the General Counsel is not required to establish a chain of supervisory knowledge.

[9] *Mercedes Benz of Orland Park*, 333 NLRB 1017 (2001).

[10] *Dynabil Industries*, 330 NLRB 360 (1999).

[11] *Bethlehem Temple Learning Center*, 330 NLRB 1177 (2000).

[12] *KOFY TV-20*, 332 NLRB 771 (2000); *Fluor Daniel, Inc.*, 311 NLRB 498 (1993).

[13] *NACCO Materials Handling Group*, 331 NLRB 1245 (2000).

[14] *Sunbelt Enterprises*, 285 NLRB 1153 (1987).

[15] *Atlantic Limousine*, 316 NLRB 822 (1995).

an 8(a)(3) violation. The burden consequently shifts to Respondent to establish persuasively by a preponderance of the evidence that it would have terminated Sauno for nondiscriminatory reasons, even in the absence of protected activity.[16] *Avondale Industries*, 329 NLRB 1064 (1999); *T&J Trucking Co.*, 316 NLRB 771 (1995). The Board's role is to ascertain whether an employer's proffered reasons for personnel actions are the actual ones. *Detroit Paneling Systems, Inc.*, 330 NLRB 1170, 1174 (2000), and cases cited therein.

Respondent argues that Alvarez' willingness to discuss the possibility of union recognition precludes a finding that it bore animosity toward Sauno's union activities. However, Alvarez never agreed to extend recognition to the Union, and Respondent did not answer or acknowledge its employees' January petition or contact the Union. While Respondent had no legal obligation to respond, its failure to do so undermines Respondent's argument that it was favorably or even neutrally disposed toward employee union activity.

Respondent further notes that the General Counsel neither alleged nor presented evidence that any employee other than Sauno was threatened or discriminated against, apparently arguing that an inference should be drawn therefrom that no union animosity or discriminatory conduct existed. However, discriminatory intent or conduct is not negated simply because all union supporters are not targeted. *Handicabs, Inc.*, 318 NLRB 890, 897–898 (1995), enfd. 95 F.3d 681 (8th Cir. 1996). The discriminatory discharge of one employee may have and have been intended to have a suppressive effect on all employees' protected activity. *Rust Engineering Co. v. NLRB*, 445 F.2d 172, 174 (6th Cir. 1971).

Respondent argues that neither Hyde nor Alvarez knew that the cleaner they decided to terminate was Sauno until after the decision was made. The testimony proffered by Respondent to establish this is too incredible to accept. Indeed, the very inconsistencies and contradictions in Hyde's testimony suggest culpability.

Respondent finally argues that Sauno's services were not needed as restroom remodeling progressed and that his "layoff" was the result of an economic decision. I cannot accept Respondent's defense for the following reasons: (1) Respondent had threatened Sauno with retaliation. (2) The termination was unexpected and abrupt. Although the remodeling had been progressing for some months, there is no evidence that Respondent considered a cutback until after Sauno's union activities occurred. No janitorial employee was informed that the remodeling might result in an employee cutback. While Respondent is not obligated to tell employees of impending personnel actions, Respondent's failure to disclose that a cutback might occur is evidence of abruptness. (3) Deligadillo refused to answer Sauno's question as to why he rather than a less senior employee had been selected for discharge. An employer has no obligation to explain its personnel actions to employees, but Deligadillo's failure to respond to Sauno's reasonable question during the termination interview suggests no lawful explanation existed. (4) Respondent failed to produce persuasive evidence of why it terminated Sauno rather than expanding his duties beyond bathroom cleaning. Although some evidence was adduced regarding the different types of janitorial work performed, there is no evidence that any significant training period was required to master any janitorial tasks. Moreover, Respondent hired additional janitorial employees and increased another's hours after Sauno's termination. Respondent's actions strongly suggest that its reasons for not assigning Sauno other work and its lack-of-work defense are spurious. (5) Respondent presented shifting defenses. At the hearing, Respondent adduced evidence of Sauno's violent and intimidating character. The evidence is clearly a postdischarge attempt to justify Respondent's conduct. Deligadillo specifically testified that Sauno was a good worker, and there is no evidence Sauno's behavior in any way prompted his termination. (6) Although calling Sauno's termination a layoff, Respondent has failed to explain why it hired other individuals rather than recalling Sauno except to assert that it had no duty to do so. Respondent's failure to recall Sauno warrants an inference that Respondent discharged rather than laid off Sauno and that it did so for reasons other than lack of work.

After consideration of the above factors, I find that Respondent has not persuasively established by a preponderance of the evidence that it would have discharged Sauno even in the absence of his union activities. Thus, Respondent has not met its burden. Accordingly, I find that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Sauno.

CONCLUSIONS OF LAW

1. Respondent violated Section 8(a)(1) of the Act by threatening Lorenzo J. Sauno with retaliation for engaging in union and/or other concerted protected activity.
2. Respondent on March 9, 2001, discharged Lorenzo J. Sauno because he engaged in union and/or concerted protected activity and to discourage employees from engaging in such activities in violation of Sections 8(a)(3) and (1) of the Act.
3. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent having discriminatorily discharged an employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

[16] A "preponderance" of evidence means that the proffered evidence must be sufficient to permit the conclusion that the proposed finding is more probable than not. McCormick, *Evidence*, at 676–677 (1st ed. 1954).

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recom-

ORDER

The Respondent, Pacific Design Center, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with retaliation for engaging in union and/or other concerted protected activity.

(b) Discharging or otherwise discriminating against any employee for engaging in union and/or concerted protected activity or to discourage employees from engaging in such activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Lorenzo J. Sauno full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Lorenzo J. Sauno whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Lorenzo J. Sauno, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since January 2001.

mended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."